

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DEAUNDRAY GASTON,

Petitioner,

vs.

BRIAN E. WILLIAMS, SR., et al.,

Respondents.

Case No. 2:13-cv-00839-JAD-CWH

**O R D E R**

Petitioner has paid the filing fee. The court has reviewed the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and the court will refer this action to the United States Court of Appeals for the Ninth Circuit because the petition is successive.

Petitioner challenges the validity of the judgment of conviction in *State v. Gaston*, Case No. 92C107652, in the Eighth Judicial District Court of the State of Nevada. Petitioner was convicted of first-degree murder with the use of a deadly weapon. Petitioner challenged the same judgment of conviction in *Gaston v. Cox*, Case No. 2:04-cv-00076-RLH-LRL. The court dismissed that action because it was untimely pursuant to 28 U.S.C. § 2244(d). Petitioner appealed that dismissal. Both this court and the Court of Appeals for the Ninth Circuit denied a certificate of appealability.

“[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C. § 2244(b).” *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner must first obtain authorization from the court of appeals before this court can consider his petition. 28 U.S.C. § 2244(b)(3).

1           Petitioner has submitted a motion for appointment of counsel (Dkt. #2). This motion is  
2 moot because the court is referring the action to the court of appeals.

3           **IT IS THEREFORE ORDERED** that the clerk of the court file the petition for a writ of  
4 habeas corpus.

5           **IT IS FURTHER ORDERED** that the motion for appointment of counsel (Dkt. #2) is  
6 **DENIED** as moot.

7           **IT IS FURTHER ORDERED** that the clerk shall add Catherine Cortez Masto, Attorney  
8 General for the State of Nevada, as counsel for respondents.

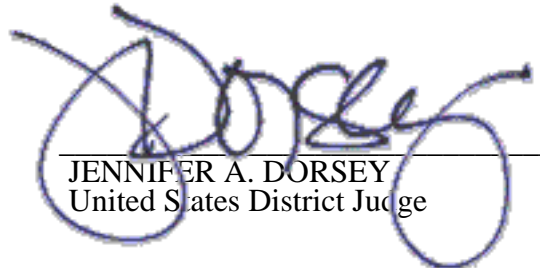
9           **IT IS FURTHER ORDERED** that **the clerk shall electronically serve respondents** with  
10 a copy of the petition and a copy of this Order. No response by respondents is necessary.

11           **IT IS FURTHER ORDERED** that, pursuant to Circuit Rule 22-3(a), the clerk of the court  
12 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

13           **IT IS FURTHER ORDERED** that the clerk of the court shall administratively close this  
14 action.

15           DATED: October 15, 2013.

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JENNIFER A. DORSEY  
United States District Judge